93-793

Supreme Court, U.S.
FILED
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NO.

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1993

ELEANOR BENT

vs.

MASSACHUSETTS GENERAL HOSPITAL, LAHEY CLINIC FOUNDATION, FALMOUTH HOSPITAL, SOUTH SHORE HOSPITAL

PETITION FOR A WRIT OF CERTIORARI

United States Court of Appeals
For the First Circuit

PETITION FOR A WRIT OF CERTIORARI

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30 pp

QUESTION PRESENTED

Did The United States District Court for the District of Massachusetts dismiss No. 93-1296 in good faith, by stating "lack of subject matter jurisdiction", when, in fact, the subject matter concerned a violation so egregious as to constitute a violation of the Constitution of the United States in depriving me of liberty, privacy, and ultimately my life, (as I am dying a slow, heinous, barbaric and tortuous death, secondary to metastasis via the lymph system on 1/8/89 and via the circulatory system, secondary to a 1/30/89 Endometrial Biopsy....which no physician would diagnose and/or treat, (on the contrary, proof is offered that they conspired to "cover" the neoplastic metastasis and septicemia), and concerning which no lawyer would represent me, secondary to false "Gorilla Dust"/propaganda about the reasons I "cared for" my mother and requested her medical records.

That I stated a viable civil rights claim (42 U. S. C. : 1983), may be read in the brief.

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Opinion of the Court of Appeals from the United States Court for the District of Massachusetts. Hon. Joseph L. Tauro, U.S. District Judge before Breyer, Chief Judge, Salya and Boudin, Circuit Judges.

Appendix B 18

Judge Cortland Mathers Judgement of "no genuine issue," an affront to the sanctity of life and women.

Appendix C 20

Judge Mathers' agreement that "proof of the elements of her claim is unlikely to be forthcoming at trial" ... when he realized that Massachusetts General Hospital refused to honor the Subpoena which would have provided my complete and accurate record, including the proof that the 1/30/89 biopsy allowed neoplastic and septic metastasis, via the circulatory system, secondary to a three inch cut made mid-line of the uterine wall.

Appendix D 22

Judge Mathers dismissal of complaints re Dr. Gelman and his advisement "No further proceedings are to be docketed when presented by this plaintiff without prior approval of the "regional administrative justice" (himself ... ensuring that the wrongs would not be exposed, as Drs. Murray, Greenstein, Mazurkie, Beckhardt, Dave Nair and Thia Sontag, South Shore Hospital and Dr. Peter Hoshino, Lahey Clinic and Berton Mandel, Goddard Medical Associates and Memorial Hospital, Cardinal Cushing General Hospital, etc. all of my complaints had been likewise dismissed, despite the presentation of substantiated proof of my claims), when the Statute of Limitations had no run, and the "Relief I was seeking wasn't financial, but exposure of the truth, and acknowledgement of responsibility/accountability. I believe the Unscrupulous wanted me to state a "dollar" amount, just as I was baited to file suit, so that physicians would "bind together", falsely assuming I was litigious ... looking for monetary compensation "as in 1987 re her mother," which was false, as in both instances I was looking for Justice and not in the form of a check (no amount of money could adequately compensate for the loss of life, and

sufferings, I and my family have endured, secondary to physicians' errors and the "charade" of justice in the Medical Tribunal System, where doctors tighten the chains of secrecy in their silence and "frivolous" false adjudications ... and the refusal of lawyers to represent me,despite the presented proof!). This collaboration and the "baiting", "blackmail", propaganda and "Gorilla Dist" tactics have no place in a free country. The physicians on the Tribunals are guilty of Obstruction of Justice, just as Dr. Morrison of Pembroke Hospital was ... in her outrageous lies to Judge Champaigne (a felony), which resulted in 68 days of deprivation of privacy and freedom, unnecessary forced psychotropic medication, when I suffered a physical disease, not a mental disease, about which the physicians were well aware.

Appendix E 25

Judge Tauro's Opinion

OPINIONS: AUTHORITIES CITED:

THE CONSTITUTION of the UNITED STATES of AMERICA

Amendment 4 "The right of the people to be secure in their persons", yet, in opposition to Statute M.G.L. C 123 S2 "Mechanical and chemical restraints 104 CMR 3.00...were unjustly employed when I wasn't a danger to myself or others (and never have exhibited such behavior)...but to "cover" the systemic metastasis and spetecemia, which mimicked a psychiatric presentation...and to render my testimony invalid...Dr. Beckhardt et. al. devised such an evil scheme saying "You're an R.N....You know too much!" (after having falsely written "psychosis/depression, though the elevated P waves and other EKG abnormalities, the x-ray revealing the apical "capping", the abnormally elevated CPK Enzymes and positive iso-enzymes etc., all proved I suffered physical pain; and Thia Sontag's lies of "physically and verbally abusive" "psychomotor agitation" etc., were an excuse the Unscrupulous planned so I would lose my freedom; as I had merely apologized for taking up a bed and the staff's time, and requested that I not undergo a physical exam. The only time I moved, was

upon hearing that yet another psychiatrist had been called, as almost every time I sought relief from my physical pain, during the preceding 11 months, a psychiatrist was called/suggested...to "cover" for Ma. Gen.'s fatal biopsy;,,,,and I stated "I'm leaving" (as may be read in the record), and was seized, in violation of the fourth amendment, and thrown onto a bed (Assault and Battery) (and with a dangerous weapon..i.e. a unnecessary and illegal/unlawful needle, containing harmful medications, which I didn't need!)...tied in leather restraints for over eight hours, without food/water/bathroom privileges/or permission to make a single phone call even....and the staff never once loosened the restraints).....and, after 8 hours, transferred to the Cardiac Care Unit (in restraints), and after three days...kidnapped/transferred against my will...to a psychiatric institution....when I suffered a physical disease, about which the physicians were aware (I had said, in shock and horror.."You can't do this!" "I'm not a danger to myself or others!" and was smugly informed "Your behavior is inappropriate!" (looking for relief from pain?...attempting to find a physician who would removed a diseased organ, so I would live?)

I was forced into an ambulance 12/22/93, after having been "doped" to insensibility via forced injections and then threats ("If you don't take these pills by mouth, you'll get a shot!"), and kidnapped to a psychiatric hospital (when I had never suffered from a mental disease!)

JURISDICTION

The Court of Appeals' Opinion in this matter was filed on July 20, 1993, regarding Judge Tauro's Dismissal for lack of subject matter jurisdiction of 2/22/93. The subject matter concerns violations of human, civil and constitutional rights! I had clearly stated that this was not essentially a medical malpractice complaint, but a violation of the constitution, and my right to liberty and life!. Because I must represent myself, legal loopholes and unscrupulous people have prevented this subject matter from being exposed. The United States Supreme Court does have jurisdiction when the state courts fail to concern themselves with this violation of the Fourteenth Amendment. Thus this court's jurisdiction is invoked!

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Amendment XIV to the United States Constitution.

STATEMENT OF THE CASE

On 12/19/88, Dr. Murray deliberately disguised the inherent precariousness of my GYN condition, because he had failed to order a "timely" hysterectomy, in 3/88, 7/88 or 1987, and failed to follow up on the 9/88 Pap Smear or even tell me the true results! He failed to notate that he performed a Biopsy 12/19/88, failed to inform me of any results, and when I inquired one month later, he lied about the results, he failed to tell me he couldn't wait on 12/29/89 (as the second opinion M.D., required by the insurance company, suggested), but rather stated erroneously "WE CAN WAIT", ordering a 1/12/89 office biopsy, when an ovarian cyst ruptured 1/8/89. He also failed to inform me of this 1/19/89 - 1/25/89, while he stalled me doing unnecessary blood tests, until he went on vacation, and he failed to inform me of the metastasis via the blood in 2/89 on three different occasions...and failed to treat the septicemia. He and his partners, and Dr. Mandel manufactured propaganda (re my mother's death in 1987) to sway well meaning physicians to join them in the conspiracy to deny me a diagnosis and treatment of a condition that never should have happened in the first

place, but was 100% curable, and is now fatal. Worse even, my husband was informed that I suffered a "delusion" of physical illness for the 11 months preceding the rupturing of the cranial and apical nodules (12/17/89 and 12/19/89), which filled me with terror, not knowing what was happening to my once healthy body! When I was advised "You belong in a hospital under medication" and followed this advice, my freedom was unjustly denied me, whereupon hearing that yet another psychiatrist was being summoned, I tried to leave, (when the chest pain subsided) but was thrown onto a bed, put in four-point leather restraints, for more than eight hours (when I had been quiet), shot up with tranquilizing and psychotropic drugs (which I had never used), doped to insensibility and "kidnapped" (after three days in the cardiac care unit, I was transferred to a psychiatric hospital where I was advised to sign a voluntary and I would be "heard" by a Judge in three days, or otherwise I would have to wait 10 days. What happened to me regarding this medical error and criminal deprivation of my liberty...defies adequate description! To think that this could happen in the "free" United

States is mind-boggling and appalling, but true and I offer substantiated proof in the brief.

REASONS FOR GRANTING THE WRIT

Certiorari should be granted because this country is supposed to be a land of laws, and the Plymouth, Brocton and Boston courts will not address the issue of the violation of my freedom and (soon) life, but rather are influenced to "sweep it under the carpet", because of the false propaganda (which they assume to be true, but exposure of the true facts will substantiate my claims). Yes I did write that I didn't own property, only after I had been informed I was "committed up to six months", because Dr. Morrison lied that I would be "dangerous and incompetent", when I have never been such! (In 1966, we purchased a home for $15,900 and in 1982, because my husband co-authored computer science text books, in addition to teaching...he and his partner were able to purchase summer homes; ours was $65,000)

A tumor was removed between C1 and C2, which would have caused respiratory arrest and skeletal paralysis, which was the Unscrupulous' plan, but that a proficient neuro-surgeon, unaware of the evil plan, removed this tumor which was "just touching the spinal cord", and about which many physicians were aware! Thus

my life was extended a few years, though the tumors are systemic and the Glazier's Limbic Encephalitis caused a progressive degenerative disease of the brain, which will result in dementia. Will you allow the deliberate and planned destruction of a human life to go unexposed? Will I go to my grave, with my family unaware my death was due to physicians' errors?

I tried in vain for treatment, until I felt the bone pain and realized the meaning of my friend's words 4/89 (whose son is a radiologist to whom I sent my Cat Scans) "Oh Eleanor...I'm so sorry I could cry!" "What could they do at that point?" "We're praying for you"! There didn't have to be a THAT POINT! This "cover up" wherein physicians bury their mistakes by involving well meaning physicians, putting them in the unenviable position of having to lie, which they do because they believe the unscrupulous' propaganda, as they destroy reputations and years of sacrifice for love and duty, and lie that my motivation was money! The truth will restore my reputation and assure that this heinous crime will not be repeated. Physicians cannot be allowed to discipline their own, because they don't! The Medical Malpractice Tribunals are a

charade and farce! This is a land of laws and the law has been broken, and those involved in the violation of the Fourteenth Amendment must be held accountable!

CONCLUSION

In the United Nations' Doctrine (1948) is written "Disregard and contempt for human rights have resulted in barbarious acts which have outraged the conscience of mankind", and these acts include the pre-planned torture, (physically, emotionally and psychologically) of a good and decent citizen, the exposure of which will outrage the conscience of every decent human being, and the perpetrators must be exposed! This is similar to the Holocaust, and it is not just I who have been victimized. Why have the medical malpractice premiums spiraled downward? It isn't that mistakes aren't happening, because honest mistakes will happen, but physicians don't tell and fix them, as my husband so naively proclaims they do,...when it's easier to "send the patient to a 'big shot' in Boston, lie about the patient's "history", and bury the mistake! Why are only 1% of medical malpractice claims resolved in favor of the defendant? I have been able to procure SOME of my records, and have met some decent physicians, who couldn't allow this atrocity, without some expression of horror.! In thanksgiving to them for allowing the extra three years, (though I should be able

to have enjoyed 30, as my vascular condition was so healthy), I do not want well meaning physicians to be punished, but the pernicious ones who planned the psychiatric hospitalization and forced psychotropic drugs to further lower my white blood count, keeping me from my family at Christmas, New Year's, my daughter's wedding shower etc....unnecessarily, assuming as they did that I would become paralyzed and "on" a respirator, from the tumor they knew existed (and the "suspicious lesion" in the breast was diagnosed falsely as a "cyst that was completely drained", until I went elsewhere and the lesion was still present at the 6:00 area, and was removed (5/8/89)....but the "firm to hard mass" was described falsely as "no tumor", when the plan of the Unscrupulous was revealed, and no treatment was offered, such that the breast damage had spread by the 1991 mammogram, but was still unacknowledged and untreated. Why bother when the Disease Process will render her brain dead?

In 1948, the United Nations Doctrine lists the following rights, which I have been denied: (3)...the right to life and liberty and security of person...(5) "No one should be subject to torture or

cruel inhumane treatment" (8) "Everyone is entitled to a fair and public hearing by an IMPARTIAL TRIBUNAL (12) "No one should be subject to (unjust) attacks upon his honor and reputation" (28) "Everyone is entitled to a social and international order in which rights and freedoms set forth in this Declaration can be fully realized". Finally, recalling Justice Goldstein's words "IT WOULD BE A GRAVE MISTAKE TO EVER BE COMPLACENT ABOUT INDIVIDUAL FREEDOM AND DIGNITY, please realize the indignities to which I have been subjected and order a complete disclosure of the facts via a Grand Jury or Trial. I will represent myself Pro Se, as I know the details and do not wish to petition for In Forma Pauperis, because my husband has worked hard so that our family has always been independent. We "get by" and I don't want to detract from our budget. I signed that I didn't own property in 1989, to receive counsel for an Appeal to the outrageous commitment, and because the Unscrupulous had lied to my husband that I wasn't physically ill, I didn't know if he would be able to pay or would pay, and I was under undue stress, having just heard the unbelievable news of the "commitment". I pray the court will

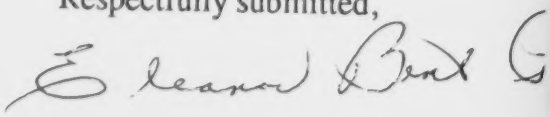
examine the 68 days of my unjust and illegal confinement, and realize that I didn't suffer a mental illness then, or ever. I am not the first, I am sure, to have been deliberately misdiagnosed, (knowing the metastasis would resemble a psychiatric disturbance... causing terror and pain), but I could be the last, if the court will grant me the Writ.

RELIEF

For the reasons set forth above, a writ of certiorari should issue to review the judgment and opinion of the Court of Appeals in this matter. The issue is violation of constitutionally guaranteed rights, and the very validity and reliability of the Constitution.

DATED: October 1, 1993

Respectfully submitted,



Eleanor Bent
Pro Se

APPENDIX A

Decided July 20, 1993

OPINION OF THE
UNITED STATES COURT OF APPEALS
For the First Circuit

No. 93-1296

Eleanor A. Bent v Massachusetts

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

(Hon. Joseph L. Tauro, U.S. District Judge)

BEFORE

Breyer, Chief Judge

Selya and Boudin, Circuit Judges.

Per Curiam. We conclude that the district court properly dismissed plaintiff's action for lack of subject matter jurisdiction.

Plaintiff complained of the treatment she and her mother received from various private doctors and other health care providers. She contended the providers' conduct was so egregious

as to amount to a deprivation of her constitutional rights to privacy, life, liberty and the pursuit of happiness.

Because the defendants are all private actors, plaintiff has failed to state any viable federal civil rights claim under 42 U.S.C. 1983. Mendez v. Belton, 739 F. 2d 15, 17 (1st Cir. 1984). At best plaintiff set forth state law cause of action. As complete diversity of citizenship is lacking between the parties, the federal district court did not have jurisdiction to adjudicate the state law claims and properly dismissed the action. Lindquist v. Precision Valley Aviation, Inc., 946 F.2d 8, 10 (1st Cir. 1991) ("Under 28 U.S.C. 1332 (a) (1), there is diversity of citizenship if the plaintiff is a 'citizen' of a different state than all of the defendants.") (emphasis added): Franklin v. Murphy, 745 F.2d 1221, 1229 (9th Cir. 1984) (absent diversity, district court has no subject matter jurisdiction over medical malpractice claim against private defendants.

Affirmed.

APPENDIX B

Decided February 17, 1993

OPINION OF THE

BROCTON SUPERIOR COURT

Eleanor Bent v. Massachusetts General Hospital

BEFORE CORTLAND MATHERS AND LAWYERS FOR THE DEFENDANT (without informing me of the action, so I could be present to state that Massachusetts General has persistently refused to provide me my complete and accurate medical records, in defiance of a court order of April 24, 1992, and in violation of the law, as I had been seeking the true results of my 1/30/89 Biopsy and the true and complete 1/30/89 blood value results...since 3/89).

The court having considered the "pleadings" and affidavits, finds there is no genuine issue as to material fact and that the defendant is entitled to a judgment as a matter of law, it is ORDERED and ADJUDGED that the defendant, Massachusetts General Hospital is entitled to a judgment as a matter of law, it is ORDERED and ADJUDGED that COMPLAINT OF PLAINTIFF

Eleanor Bent be hereby DISMISSED AGAINST DEFENDANT Massachusetts General Hospital with costs. (thereby rewarding defiance of a court order) (words in parentheses have been added by Plaintiff).

APPENDIX C

Decided January 29, 1993

OPINION OF THE

BROCTON SUPERIOR COURT

Eleanor Bent v. Massachusetts General Hospital

Before: Mathers, Cortland C.A.

The defendant stated that "proof of the elements of her claim is unlikely to be forthcoming at trial" (because they refused to provide the proof by refusing to obey the law and provide my complete and accurate medical record that indicated the uterine wall was cut (via a three inch scar that was later noted on a ultrasound) which allowed the tumors in the Endometrium to metastasize, along with sepses, via the circulatory system. However the Plaintiff was able to prove, via Aposteriori reasoning (despite being denied the Apriori proof) via blood tests, MRI and Cat Scan results, Kidney ultrasounds and operations removing tumors etc. (the results of

which were denied/disguised, in an attempt to keep the truth hidden!)

APPENDIX D

Decided July 10, 1992...Docketed January 17. 1991

OPINION OF C. A. MATHERS

Eleanor Bent v Earl P. Gelman M.D.

Before: C.A. Mathers (Regional Administrative Justice)

The Defendant (falsely) stated 1. "On the face of said Complaint, the Statute of Limitations has run" and 2. "The Plaintiff does not comply with Rule 8(a) by setting forth a short and plain statement of the claim showing that she is entitled to relief, not does it comply with the requirements of Rule 10 with respect to from of pleadings.

(Having been denied legal representation, I wasn't aware of the rules, which is what the Unscrupulous intended/planned). This physician had "problems" in another state, and was found guilty of sexual misconduct, but was allowed to practice Gynecology in Massachusetts, on unsuspecting women. Dr. Murray procured him (10 days after realizing my condition.... that required immediate, life-saving attention, about which he failed to inform me, realizing

he had "goofed"in 3/88, 7/88, 9/88 etc.) as the (insurance company required) "second opinion". At the end of the exam, I felt a moderately painful contraction, and Dr. Gelman later stated the presence of "lubrication" (as why he didn't think I was post-menopausal). This painful contraction brought back memories of a similarly painful contraction, experienced under Scopolomine, during the births of one of my first six children; and the "after-effects" had been experienced with my husband. Embarrassed, I had no intention of announcing this incident, until I realized Dr. Gelman's reasons for suggesting a "third opinion...a progesterone/estrogen level/a big shot in Boston"! ...realizing why Dr. Granai looked angry... just before performing the (fatal) biopsy.

(When I declined Dr. Gelman's suggestion of "With your permission, I will say you'd like to wait on the operation"....saying (not wanting to "slight" him), "I'll go home and write the "pros" and "cons"...I'm not afraid of the knife, but I get a superficial phlebitis!", adding "I don't want to hurt Dr. Murray's feelings...with all the troubles he is having", and "I wrote to the State Board praising him" (Dr. Murray)..... Dr. Gelman

immediately jumped up from his chair stating "I'll see if Dr. Murray is still in his office!" "If you do have the operation, you'll have to take medication!")

Judge Mathers wrote "No further proceedings are to be docketed when presented by this plaintiff/without prior approval of the regional administrative justice", so I went to Boston, realizing Judge Mathers must have believed the propaganda and "Gorilla Dust", (even though Dr. Gelman was arrested when discovered in his car, engaging in oral sex with a HIV Aids-infected prostitute, certainly reducing his credibility...and the only "bad" anyone could say about me, was what I falsely wrote about myself, in my untherapeutic attempts to punish myself for the pain my mother endured, for which I foolishly blamed myself.

APPENDIX E

Decided February 22, 1993

OPINION OF THE
United States District Court

Eleanor Bent v Massachusetts General Hospital et. al.

Before: TAURO, Ch. J.

This action is hereby DISMISSED for lack of subject matter jurisdiction. It is so ordered.